IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal Lodging No. 267 of 2005
in
Arb Petition No. 57l of 2004
in
Arb Case No.L/35/2003-04

Shrijee India Exports Pvt Ltd.. appellants
vs
Nilesh B Sanghvi and anr.....Respondents

Mr. Shailesh Shah i/b M/s K V Aiyar and Associateds for appellant

Mr.V.T.Walawalkar for respondent no.l

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 4.4.2005

P.C:

l. This Appeal is directed against the judgement and order of D.K.Deshmukh J. dismissing the Arbitration Petition under section 34 of the Arbitration and Conciliation Act, l996 for setting aside the award made by the Arbitral Tribunal appointed by Bharat Merchants Chamber of which Respondent is a member.

2. Mr.Shailesh Shah, learned counsel appearing for the Appellant made three submissions before us. First, the learned counsel contended that the Appellant is also a member of a trading body called Hindustan Merchants Chamber and the Rules framed by

Bharat Merchants Chamber under which reference was made to the Arbitral Tribunal clearly provides for appointment of a joint Arbitral Tribunal and rules out exclusive jurisdiction of the Arbitrators on the panel of Bharat Merchants Chamber. In this connection the learned counsel placed strong reliance on Rule 45 of Bharat Merchants Chamber Rules. Rule 45 provides that if one of the parties was a member of Bharat Merchants Chamber and the other party was member of other Commercial Chamber and both Commercial Chambers had an agreement for joint arbitration then in that case both parties had a choice to appoint their Arbitrator from the panel of Commercial Chambers of which they are members and then in turn both such Arbitrators select the presiding member. According to the learned counsel there is an agreement between Bharat Merchants Chamber and Hindustan Merchants Chamber of which the appellant is a member and, therefore the dispute ought to have been referred to the joint arbitration and thus the award of the Arbitral Tribunal appointed by Bharat Merchants Chamber is a nullity. We are not impressed by the submission of Mr. Shah. In the first place, there is nothing to show that two Commercial Chambers had an agreement for joint arbitration and no such agreement was produced on record. Secondly no

objection was taken to the constitution of the Arbitral Tribunal under section l6 of the Arbitration and Conciliation Act, l996. In fact the Appellant had duly signed the arbitration agreement on 27.9.2003 conferring jurisdiction upon Bharat Merchants Chamber who conducted the Arbitration and appointed Anant P Gupta as their arbitrator. It appears that the request to have the dispute decided by the arbitration was made belatedly on 5.4.2004 though proceedings had commenced as far back as on 29.7.2003 and consequently the request came to be rightly rejected by Bharat Merchants Chamber.

3. The second submission of Mr. Shah is that the Appellant had raised an issue that they had returned the goods to the Respondent and produced delivery challans to show the delivery but the Arbitrators failed to take the document into consideration and thus the Arbitrators committed breach of principles of natural justice. This submission is equally devoid of any substance. The delivery challans show that the goods were returned from Appellant’s establishment at Surat.It is seen from the record that for the said delivery appropriate credit has already been given which is borne out by the extract of accounts produced by

the Respondents. It appears that before the Arbitrators the Appellant had changed their story completely and contended that the goods were returned from Mumbai and not from Suarat. However,no delivery challans were produced showing the delivery from Mumbai. Under these circumstances the Arbitrators were right in rejecting the case of the Appellant that the goods were returned. Moreover this being a question of fact finding,it is not possible for us to reappreciate the evidence independently under section 34 of the Act.

4. Lastly, Mr. Shah contended that the claim was already settled between the parties for a sum of Rs.3 lacs payable in three instalments of Rs l lac each. This contention was raised for the first time in June 2004. Prior to that,there was correspondence between the parties and this contention was never raised and therefore, it was disbelieved by the Arbitrators.

5. In the circumstances no interference is warranted with the order of the learned single Judge. Appeal is dismissed.